

ENTERED

May 10, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC,

Plaintiff,

VS.

AETNA HEALTH INC., *et al.*,

Defendants.

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CIVIL ACTION NO. 4:22-CV-03805

ORDER

Before the Court are Plaintiff Guardian Flight, LLC’s Motion to Consolidate (the “Motion”) (Doc. #27), Defendant Aetna Health Inc.’s Response (Doc. #30), and Plaintiff’s Reply (Doc. #34). On April 21, 2023, the Court held a motion hearing, during which the Court heard oral arguments from the parties regarding the Motion. Having considered the parties’ written and oral arguments, the Court finds that the Motion should be granted.

On November 1, 2022, Plaintiff filed this lawsuit against Defendants Aetna Health Inc. (“Aetna”) and Medical Evaluators of Texas ASO, LLC (“MET”). Plaintiff and Aetna participated in an Independent Dispute Resolution (“IDR”), as required by the No Surprises Act (“NSA”), where MET served as the decisionmaker. Plaintiff asks the Court to vacate MET’s IDR award, alleging that Aetna procured the award by misrepresenting facts and undue means, and to reassign the matter to a different IDR reviewer. Doc. #1. Fifteen days later, on November 16, Plaintiff and its affiliates, Reach Air Medical Services LLC and Calstar Air Medical Services LLC, sued Kaiser Foundation Health Plan, Inc. and MET. Doc. #27 at 1, 3; *see also Reach Air Med. Servs. v. Kaiser Found. Health Plan, Inc.*, No. 4:22-cv-3979. Plaintiff’s second lawsuit (the “Related Case”) was

assigned to the Honorable Andrew S. Hanen. The Related Case asserts identical claims and requests for relief as the case before the Court—“vacatur of the IDR awards and a court order mandating a rehearing.” Doc. #27 at 3; *see also Reach Air Med. Servs.*, No. 4:22-cv-3979, Doc. #1 at 20–24. MET moves to dismiss the claims against it in both cases, alleging it is entitled to arbitrator’s immunity. Doc. #8; *Reach Air Med. Servs.*, No. 4:22-cv-3979, Doc. #24.

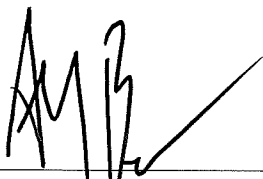
Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the Court may consolidate actions that “involve a common question of law or fact.” FED. R. CIV. P. 42(a). Here, the Court finds that consolidation is appropriate. The claims in both cases arise from the enforcement of the NSA, an act that became effective on January 1, 2022. Because the NSA was recently enacted, no court has opined on when a court may review and/or vacate an IDR award. Similarly, courts have yet to determine if IDR decisionmakers, like MET, are entitled to any immunities. Accordingly, consolidation is proper to avoid the risk of inconsistent rulings by judges of the same court adjudicating a newly enacted law. *See Tex. Gen. Land Off. v. Biden*, No. 7:21-cv-00272, 2021 WL 5588160, at *2 (S.D. Tex. Nov. 29, 2021) (stating the factors district courts should consider when deciding if consolidation is appropriate).

For the foregoing reasons, Plaintiff’s Motion to Consolidate (Doc. #27) is hereby GRANTED. The action styled *Reach Air Medical Services v. Kaiser Foundation Health Plan, Inc.*, No. 4:22-cv-3979 is hereby CONSOLIDATED into the first-filed action styled *Guardian Flight, LLC v. Aetna Health Inc.*, No. 4:22-cv-3805.

It is so ORDERED.

5/10/23

Date



The Honorable Alfred H. Bennett
United States District Judge